

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DUNCAN J. MCNEIL, III,)	
)	8:05cv389
Plaintiff,)	
)	MEMORANDUM AND ORDER
vs.)	(appeal)
)	
UNITED STATES, et al.,)	
)	
Defendants.)	

This matter is before the court on filing no. 14, the Notice of Appeal filed by the plaintiff, Duncan J. McNeil, III, a prisoner located in the Eastern District of Washington. The plaintiff appeals the Memorandum and Order and accompanying Judgment in which I dismissed his complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). See McNeil v. United States, 2005 WL 2757267 (D. Neb. Oct. 25, 2005). Also before the court are filing nos. 15 and 16, the plaintiff's Motions for Leave to Proceed in Forma Pauperis ("IFP") on appeal and for other relief.

The plaintiff's Motions for Leave to Proceed IFP on appeal are denied. The Eighth Circuit Court of Appeals has stated that "[d]istrict courts should continue to certify pursuant to [28 U.S.C.] § 1915(a)(3) and [Fed. R. App. P.] 24(a) whether or not an appeal by any appellant who has moved in the district court to proceed in forma pauperis on appeal is or is not taken in good faith. If the district court concludes that such an appeal is not taken in good faith, it shall, pursuant to [Fed. R. App. P.] 24(a), 'state in writing the reasons for the denial.'" Henderson v. Norris, 129 F.3d 481, 485 (8th Cir. 1997).

Having considered the record in this action, I conclude that this appeal is not taken in good faith. The plaintiff's claim is one of many actions filed by the plaintiff nationwide, purportedly to register a foreign judgment, obtain a declaratory judgment and for various other forms of relief against federal agencies and officers. As the court in the plaintiff's district of confinement noted, the plaintiff has filed a multitude of lawsuits in federal district courts around the country in order to avoid the three-strikes limitations imposed in the Eastern District of Washington. McNeil v. United States, 2005 WL 1915842, *1 (E.D. Wash. Aug. 9, 2005). This case is frivolous, fails to state a claim on which relief may be granted, and seeks monetary relief against defendants who are shielded by sovereign immunity from such relief. Therefore, it is not taken in good faith.

If a district court determines that an appeal is not taken in good faith or that the individual is not otherwise entitled to pauper status, the Clerk of the district court must serve notice of the district court's decision on the parties and the Court of Appeals. Fed. R. App. P. 24(a)(4). The appellant then has 30 days, following service of the Clerk's notice, to file a motion in the Court of Appeals for leave to proceed IFP on appeal. Fed. R. App. P. 24(a)(5). Such a motion in the Court of Appeals must be accompanied by a copy of the affidavit filed in the district court, or by a new affidavit if none was previously filed, and by a copy of the statement of reasons given by the district court for denial of IFP status on appeal. Id.

In filing no. 16, the plaintiff requests additional relief in the form of appointment of counsel on appeal, electronic access to PACER without cost, and free copies of

documents. The motion is denied, but the plaintiff may reassert his requests for relief directly to the Eighth Circuit.

THEREFORE, IT IS ORDERED:

1. That filing nos. 15 and 16, the plaintiff's Motions for Leave to Proceed IFP on appeal and for other relief, are denied;
2. That the Clerk of Court shall send a copy of this Memorandum and Order to the parties and to the Eighth Circuit Court of Appeals as the notice required by Fed. R. App. P. 24(a)(4), and the Clerk shall process the appeal to the Eighth Circuit; and
3. That the plaintiff may file a motion in the Court of Appeals for leave to proceed IFP on appeal and for the additional relief he sought in filing no. 16.

December 1, 2005.

BY THE COURT:

/s Richard G. Kopf
United States District Judge